

-PS-O-

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

OTIS MICHAEL BRIDGEFORTH, 07A6695,

Plaintiff,

-v-

08-CV-6471Fe

ORDER

DSP BARTLETT, DSP Dept. of Program;
J. COLVIN, DSS Dept of Secur. Serv.;
J. ARNALDO, Correctional Officer;
P. AMERSON, Searg.;
J. COLLINS, Correctional Officer
and W. JORDAN, Correctional Officer;

Defendants.

Plaintiff pro se filed a complaint which the Court Ordered to be served on December 15, 2008 (Docket # 3). Subsequently, and prior to service of his complaint on defendants, plaintiff has filed papers he calls "Interlocutory Summary Judgment" (Docket ## 4 and 5).

The Federal Rules of Civil Procedure do not provide for an interlocutory motion for summary judgment. Nor do they allow a motion for summary judgement before 20 days after commencement of the action. Sections 1915(a) and 1915A(a) of 28 U.S.C. require the Court to conduct an initial review of "a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity," 28 U.S.C. § 1915(a) and 28 U.S.C. § 1915A(a), and the Court must dismiss a claim or the action "if the Court determines that ... (b) the

action ... (1) is frivolous, malicious or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." *Id.* Plaintiff's complaint was subject to review under those statutes, and was, therefore, not formally filed until the Court ordered plaintiff's papers to be filed subsequent to such review on December 15, 2008. The motion, even if considered a motion for summary judgment, was filed December 29, 2008, before such motion would be allowed by the Federal Rules. Federal Rule of Civil Procedure 56(a)(1). Accordingly, plaintiff's motion is denied as premature without prejudice to it's renewal at the appropriate time.

However, because plaintiff, a prisoner, has attached to his motion many copies of original documents, the Clerk of the Court is directed to file, as of the date the motion was filed, the documents attached to the motion in a separate docket entry as exhibits in support of the complaint. The Clerk of the Court is also directed to send plaintiff, with a copy of this Order, the Pro Se Litigation Guidelines, to assist him in litigating his case under the Federal Rules of Civil Procedure.

SO ORDERED.

S/ Michael A. Telesca

MICHAEL A. TELESCA
United States District Judge

Dated: January 22, 2009
Rochester, New York